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Supreme Court of the United States
OCTOBER TERM, 1996

NATIONAL CREDIT UNION ADMINISTRATION,
Petitioner,

v.

FIRST NATIONAL BANK AND TRUST CO., *et al.*,
Respondents.

and

AT&T FAMILY FEDERAL CREDIT UNION AND
CREDIT UNION NATIONAL ASSOCIATION, INC.,
Petitioners,

v.

FIRST NATIONAL BANK AND TRUST CO., *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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JOINT BRIEF OF *AMICI CURIAE* AD HOC SMALL EMPLOYERS GROUP, NATIONAL COOPERATIVE BUSINESS ASSOCIATION, CAMPUS CREDIT UNION COUNCIL, AND ASSOCIATED BUILDERS AND CONTRACTORS, INC., IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE

This brief is submitted in support of petitioners jointly on behalf of four independent entities. The first is an *ad hoc* group of small employers with employees belonging to federally chartered credit unions. The sponsoring employers are listed at Appendix A attached hereto. The second is the National Cooperative Business Association ("NCBA"), a national trade association representing cooperatives.[1] The third is the Campus Credit Union Council, a credit union trade association representing credit unions serving college students. The fourth is the Associated Builders and Contractors, Inc. ("ABC"), a national trade association representing construction and construction-related firms across the country. All four amici share a strong interest in the outcome of this case.

Interest of Amicus Small Employers Group

The *ad hoc* group of small employers consists of both manufacturing and service companies. The overwhelming majority of these companies employ less than the 500 employees recognized by the National Credit Union Administration (NCUA) as the bare minimum number required to form their own federally chartered credit unions.[2] According to the most recent Census Bureau Population Survey, nearly sixty-three million employees in the United States work in

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[1] Pursuant to Rule 37.6, Amici note that no counsel for any party had any role in authoring this brief and no person other than Amici and their members made any monetary contribution to its preparation or submission. Amicus NCBA notes that petitioner Credit Union National Association is a member of the National Cooperative Business Association.

[2] NCUA Chartering and Field of Membership Manual, Revised 7/94, Section 1, page 12. Practical considerations of scale effectively limit small employers from forming their own credit unions even in the absence of the NCUA Manual requirement. The organizational and financial requirements of setting up and operating a credit union exceed the capabilities of most employers with less than approximately 2000 employees, let alone the 500 used as a guideline in the manual.

companies with less than 500 employees. This represents about sixty-two percent of the total American work force. The Court of Appeals' interpretation of the "common bond" requirement effectively precludes employers with less than 500 employees from offering federal credit union services to their employees.

The appellate court's ruling therefore hits small employers, and their employees, with particularly deadly force. Unless it is overturned, the lower court's ruling would eliminate entirely the benefits of workplace-sponsored federal credit union membership for nearly sixty-three million members of the American work force. Many small employers regard their ability to sponsor credit union membership to be an important workplace benefit that allows them to compete with much larger employers. Many employees of small firms rely heavily on the benefits of their credit union membership, including convenient workplace access to financial services, automatic deposit and savings plans, and the availability of credit on fair terms. Both the small employers and their employees who have come to rely on the benefits of credit union membership will suffer a sharp disappointment of their justified expectations based on a fifteen- year history of consistent interpretation of the Federal Credit Union Act by the NCUA if the lower court's ruling is allowed to stand. Moreover, because employees of smaller firms have, on average, lower wages and fewer benefits than employees of large companies, the appellate court's ruling disproportionately injures precisely the same group the Federal Credit Union Act was intended to benefit--individuals of "small means."

Interest of Amicus National Cooperative Business Association

Amicus curiae National Cooperative Business Association (NCBA)[3] is a national, cross-industry membership and trade association representing cooperatives--over 100 million Americans and 45,000 businesses. Founded in 1916, NCBA's membership includes cooperative businesses in the fields of housing, health care, finance, insurance, child care, agricultural marketing and supply, rural utilities and consumer goods and services as well as state and national associations of cooperatives. Our membership includes the Credit Union National Association (CUNA), petitioners in this case, and the National Association of Federal Credit Unions (NAFCU), and other national and state associations of credit unions.

NCBA represents cooperatives before Congress and the federal agencies and promotes and supports cooperatives in the U.S. and overseas through training and technical assistance programs and publications.

The membership of NCBA has a strong interest in this case. The mission of NCBA is "to develop, advance and protect cooperative enterprise," including credit unions, which are cooperatives. The mission is based on the commitment of our members to the fact that cooperatives offer individuals a way of joining others in creating cooperative businesses to meet economic needs that might otherwise go unmet. Each year, a Statement of Policy is voted on by our membership as part of our annual meeting. The 1997 Statement of Policy in part expresses the support of our members for credit unions generally, and specifically supports credit unions on the field of membership issues raised in this case.

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[3] Legally, the Cooperative League of the USA doing business in the United States as the National Cooperative Business Association.

NCBA would be directly and adversely affected by an adverse decision in this case because we offer our employees membership in a credit union that was created under a separate common bond of membership. In addition, many of our members belong to credit unions with multiple common bonds, and they would also be adversely affected.

Interest of Amicus Campus Credit Union Council

Amicus curiae Campus Credit Union Council ("CCUC"), founded in 1985, is a credit union trade association representing credit unions serving college students. CCUC currently has 26 member student credit unions representing over 70,000 college student credit union members nationwide with the number of potential undergraduate student members exceeding 400,000[4]. A "student credit union" is a student-run cooperative financial institution whose primary field of membership includes students and alumni of a college or university. The term also includes any credit union that has a college student body in its field of membership and actively serves college students through an on-campus branch or desires to further offer credit union services to college students. CCUC provides development and training services to stand-alone college student credit unions, student-run branches and other credit unions serving the unique needs of college students. In addition, CCUC promotes educating students in the credit

[4] This figure is based on current undergraduate enrollment numbers from the following colleges and universities: San Jose State University, Georgetown University, University of Illinois, Minnesota State University, University of Missouri, Rutgers University, Columbia University, Fordham University, Skidmore College, Miami University (Ohio), University of Toledo, Kent State University, University of Pennsylvania, UCLA, University of California (Berkeley), Purdue University, Babson College, University of Massachusetts, University of Oregon, University of Michigan, Mary Washington College, George Mason University, James Madison University and Virginia Polytechnic University.

union philosophy and marshals resources to effectively assist college student credit unions in becoming full service financial institutions.

CCUC and the college student credit unions it represents have a strong interest in this case. CCUC believes that credit unions provide unparalleled benefits to students. Student credit unions educate students on thrift and credit management, involve students in the daily operations of the credit union and offer students financial products at more favorable rates and fees than those charged by banks. CCUC opposes any legislative or regulatory effort that would hinder the ability of credit unions to provide financial services to college students. CCUC believes that the lower court's decision in this case, if upheld, will have a crippling effect on the entire credit union system and will jeopardize, each year, the ability of over 100,000 college students to access reasonably-priced financial services provided by student credit unions.

Interest of Amicus Associated Builders and Contractors, Inc.

Amicus Curiae Associated Builders and Contractors, Inc. ("ABC"), is a national trade association representing more than 19,000 construction and construction-related firms across the country. ABC established the "ABC Credit Union" in 1975 to provide its member companies with the option of offering membership in the credit union as a benefit to their employees. In 1990, ABC merged the ABC Credit Union with the IR Federal Credit Union to better service its members. More than 860 separate employer groups of ABC member firms participate in this one credit union. Over 16,000 employees of ABC member firms hold savings in excess of $6.2 million and loans of more than $3 million in this credit union.

ABC and the building and contractor firms it represents have a strong interest in this case. The construction industry is primarily comprised of hourly employees, both skilled and

unskilled, who typically work for more than one employer in the course of a year. The industry is cyclical and transient in nature. Credit union participation by these construction workers that is portable from one employer to another is a valued benefit offered to these employees. Between the court-ordered October 25 enrollment cutoff and the December 24 partial stay allowing new members to join existing groups (but not new groups), more than 300 employees of ABC's member firms were denied the right to participate in a credit union. (These employees and all other SEG members face possible "divestiture" if the NCUA interpretation is disallowed.)

Employees of ABC's member firms exemplify the portion of the public most directly intended by Congress to be served by credit unions -- those most likely to be in need of access to convenient, affordable financial services. Upholding the lower court's rulings in this case will cause substantial injury to that very portion of the public intended by Congress to be protected by the Federal Credit Union Act.

SUMMARY OF ARGUMENT

The Court of Appeals' interpretation of the Federal Credit Union Act would adversely affect small employers, cooperative businesses, college campus credit unions, builders and contractors, and all those individuals affiliated with those groups who presently are eligible for the benefits of federal credit union membership. Many of those groups and individuals have come to rely on those benefits, and will be deprived of them by the restrictive interpretation of the "common bond" requirement proposed by the lower court. That restrictive interpretation is contrary to the broad remedial purposes of the Act, and should be reversed.

ARGUMENT

I. THE COURT OF APPEALS' RESTRICTIVE READING OF THE FIELD OF MEMBERSHIP REQUIREMENT IS INCONSISTENT WITH THE BROAD REMEDIAL PURPOSES OF THE FEDERAL CREDIT UNION ACT.

The Federal Credit Union Act ("FCUA") was adopted in 1934, at a time in our history when Congress was primarily concerned with attempting to help the country pull itself out of the Great Depression. The Act's Preamble expressly states its purpose to:

> establish a Federal Credit Union System, to establish a further market for securities of the United States and *to make more available to people of small means credit for provident purposes through a national system of cooperative credit*, thereby helping to stabilize the credit structure of the United States.

Federal Credit Union Act, Pub. L. 73-467, 48 Stat. 1216 (1934)(emphasis added).[5]

At least two elements of the quoted language from the Preamble argue strongly in favor of a broad construction of all provisions of the Act bearing on the scope of federal credit union membership. First, the expressed purpose of the Act is to "make more available" the benefits of credit union membership to "people of small means." Thus the clearly articulated purpose of the Act is expansive--to include *more* individuals within its scope. Second, the Act was concerned

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[5] The legislative history of the Act specifically recognizes Congress' intent to make credit available to more individuals at non-usurious rates and to encourage some organized method for saving. *See* S. Rep. No. 555, 72d Cong, 2d Sess. 2 (1934).

with establishing a "*national system* of cooperative credit"-- an expansive allusion to the nationwide availability of credit union services foreseen by the 1934 Congress.

However, the Court of Appeals' interpretation of the "common bond" requirement has the opposite effect. It severely limits the availability of federal credit union services. Worse, that limitation disproportionately impacts precisely those whom Congress intended in 1934 to benefit--individuals of "small means." As is demonstrated at greater length below, at pp.14-15, employees of small and mid-sized companies tend, on average, to be paid less, and to enjoy fewer benefits, than employees of large firms. They also tend to rely more heavily on the benefits of credit union membership. But it is precisely those small and mid-sized employers--with less than 500 employees--who will be effectively barred from offering credit union services to their employees under the Court of Appeals' holding.

The appellate court ignored this powerful evidence of Congressional intent from the language of the Act itself in its application of the two-step analysis of *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The appellate court never even reached the second step of *Chevron*--requiring deference to the interpretation of the agency charged with administering the Act--because it held that the Section 109 language at issue relating to the common bond requirement unambiguously barred multiple fields of membership.

Amici do not here repeat the textual arguments regarding Section 109 ably presented by petitioners showing that the court was mistaken in reaching this conclusion. But amici submit that the court was mistaken in its application of *Chevron* to the facts before it, and not solely because it refused to reach step two of the *Chevron* analysis. The lower court

applied *Chevron* as though it superseded accepted tenets of statutory construction. But *Chevron* must be read in conjunction with elementary principles of statutory interpretation, including the well-accepted principle that *all* the provisions of a statute must be read together so as to give meaning to each, and, wherever possible, to be consistent with each other. E.g., *United States National Bank of Oregon v. Independent Insurance Agents of America, Inc.*, 508 U.S. 439, 455 (1993)("[i]n expounding a statute, we must be guided not by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.")(quoting *United States v. Heirs of Boisdore*, 8 How. 113, 122 (1849)).

Indeed, *Chevron* expressly requires that courts "must give effect to the unambiguously expressed *intent* of Congress" if that intent is expressed in sufficiently clear terms. 467 U.S. at 842-843 (emphasis added). Here, Congress *has* expressed its clear intent to make federal credit union services broadly available to more individuals. The lower court mistakenly focused solely on the Section 109 language relating to the "common bond" requirement, in isolation, and without reference to other provisions of the Act that inform the meaning of Section 109 and require a broad interpretation of that provision in order to be consistent. Had the court looked to other such language in the Act--specifically, the statement of purpose in the Act's Preamble--the court would have been forced to conclude that Congress clearly expressed its intent in 1934 to require a broad interpretation of the common bond requirement, instead of the restrictive interpretation the court adopted.

As the Preamble makes clear, the underlying purposes of the Act were remedial and salutary. At a time of great economic privation, Congress intended to extend the benefits of credit union services to "people of small means" for

"provident purposes." In 1982--another time of economic strain and hardship for financial services providers--NCUA correctly interpreted Section 109 of the Act to mean that federally chartered credit unions could include within their field of membership more than one group with a "common bond." The appellate court's judicial overruling of the NCUA's interpretation of its own enabling statute is unsupported by the Act itself, by Congressional intent, or by *Chevron* principles properly applied.

II. THE LOWER COURT'S RESTRICTIVE INTERPRETATION WOULD HAVE DEVASTATING EFFECTS ON EXISTING FEDERAL CREDIT UNIONS AND THOSE WHO USE THEM.

Small employers, many cooperative businesses, campus credit unions, and many builders and contractors would be severely and adversely affected by the appellate court's ruling. The availability of employer-sponsored credit union membership is a significant benefit to the employees and members of all four groups, allowing them access to convenient checking, deposit, credit and savings services that many could not otherwise access or afford.

A. Small Employers and their Employees Would Be Deprived Entirely of the Benefits of Employer-Sponsored Federal Credit Union Services, and Would Be Impaired In Their Ability To Compete.

(1) *Over 62 percent of the workforce would be deprived of access to employer sponsored federal credit unions.*

The chartering manual of NCUA specifies 500 individuals as the recommended *minimum* for the size of any group

applying for a federal credit union charter.[6] In practice, NCUA approves few charters for groups consisting of only 500 individuals. Because only about 40 percent of the individuals in any group will typically join a sponsored credit union, a more practical "threshold size" is closer to 2,000.

Even aside from the NCUA's chartering guidelines and practices, economies of scale generally make setting up and operating a credit union servicing less than four or five hundred members prohibitively expensive. Applying for a charter, securing and leasing office space, maintaining bookkeeping, administrative and managerial functions, and attracting sufficient deposits to offer meaningful credit services to its members all require a "critical mass" of members for a credit union. That critical mass exceeds a group of 500 possible members. According to the most recent Census Bureau Population Survey, nearly sixty-three million employees in the United States work in companies with less than 500 employees. This represents about sixty-two percent of the total American work force.[7]

So long as credit union fields of membership include different groups with a common bond among the members of each group, small and mid-size firms and their employees can continue to enjoy the benefits of credit union membership. Typically, small employers have sponsored and formed Select Employee Groups ("SEGs"), or a group of individuals who share the common bond of having the same employer. These SEGs can then join a larger, existing credit union, or band together to create one of their own that has enough members to

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[6] NCUA Chartering and Field of Membership Manual, Revised 7/94, Section 1, page 12.

[7] Source: March 1996 Current Population Survey, Bureau of the Census.

make it economically feasible. About 3,600 federal credit unions have at least one SEG. Among these 3,600, the average credit union has 40 SEGs, with an average of 72 members per SEG.[8]

Under the appellate court's interpretation of the common bond requirement, however, small employers and their employees would be barred entirely from access to employer-sponsored credit unions. This would constitute a serious deprivation to the many members of SEGs who have come to rely on credit union services to help organize their finances, to establish savings and automatic deposit plans, and to give them access to credit they would otherwise be unable to obtain.

(2) *Small employers would be at a competitive disadvantage to employers large enough to charter their own credit unions.*

The appellate court's ruling is also a significant blow to small and mid-sized employers, who regard their sponsorship of credit union membership as a substantial benefit they can offer employees. Availability of credit union membership helps small employers attract desirable employees. If they are no longer able to offer this benefit to employees and prospective employees, they will suffer a further competitive disadvantage compared to firms large enough to charter and operate their own credit unions.

Most small employers already face challenges from larger and better financed competitors on a number of different fronts--access to suppliers, access to financing and credit, pricing pressures created by economies of scale available to large competitors, and the operational hurdles of doing business on a small scale. Elimination of small employers' ability to

[8] Source: Economics and Statistics Department, Credit Union National Association.

sponsor credit union membership would add yet another area where they would be disadvantaged with respect to their larger competitors--in the marketplace for employees.

And yet small businesses have traditionally formed the backbone of American enterprise, driving employment, growth, change and innovation in many fields. Moreover, there are few large, successful corporations that did not start out as small businesses. Putting additional impediments in the way of small business success is precisely the kind of bad policy avoided by NCUA's interpretation of the common-bond requirement.

(3) *Employees of small employers have come to rely on the many benefits of credit union service pursuant to a fifteen year-old interpretation of the Act.*

The harm to small employers and their employees is intensified by their justifiable reliance on a well-established fifteen year-old interpretation of the common bond requirement by the agency charged with administering the Credit Union Act, the NCUA. Since 1982, when NCUA promulgated its "common bond" interpretation allowing SEGs, the growth of this membership class of individuals has been steady and sustained. Today, over 10.5 million of the approximately 44.2 million credit union members--or about 24 percent--are members of SEGs.[9] The employers who formed SEGs as well as the employees who joined them have come to rely on the availability of credit union services. Savings, automatic deposit, the availability of credit on fair terms without the onerous and sometimes prohibitive demands of investor-owned financial institutions have become a way of life to many who would not otherwise have access to those services. Credit

[9] Source, December 1996 Data, Economics and Statistics Department, Credit Union National Association; NCUA.

union membership is a strong force promoting fiscal responsibility for many. Being deprived of the opportunity for such membership will be a significant financial step backward for many employees of small firms and their families.

(4) *The appellate court's ruling disproportionately harms precisely those whom the Credit Union Act was intended to benefit--individuals of small means.*

Analysis of recent Census data demonstrates that employees of firms with 1-9 workers, on average, earn only $.68 for every $1.00 earned by employees of firms with 500 or more workers. Employees of those larger firms earn, on average, $10,000 more annually than do employees in the smallest firms. Other workplace benefits, such as health insurance and pension coverage, are also, on average, more readily available to employees of firms with more than 500 workers.[10]

Therefore, on average, workers at small firms earn less, and have fewer benefits, than their counterparts at large companies. It is precisely such individuals of "small means" that Congress expressly intended to benefit when the Federal Credit Union Act was passed into law.

But it is *also* individuals of small means who are most directly affected, and most directly harmed, by cutting off their eligibility to participate in employer-sponsored credit unions. The appellate court's ruling therefore has the ironic effect of disproportionately harming the very group the Act was intended to benefit.

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[10] Woodbury, S., Smith, D., and Kelly, W., "An Analysis of Public Policy on Credit Union Select Employee Groups" at 2-3 (Filene Research Institute and Center for Credit Union Research, School of Business, University of Wisconsin-Madison, 1996).

For many individuals, credit union membership can mean the difference between fiscal responsibility and serious financial difficulties. A number of features common to credit unions make them especially appealing to lower-wage workers. These features include the following: (i) the easy accessability to financial services at the workplace, where many credit unions have their offices and/or representatives; (ii) the convenience of integrating paychecks with automatic deposit or savings plans, or with automatic loan repayment schedules; (iii) the security of conducting financial dealings with peers and co-workers; and (iv) a preference for participating in a cooperative association rather than an investor-owned institution governed by the profit motive.

Thus, the lower court's interpretation would adversely affect not only a disproportionately large number of individuals among the group the Act was intended to benefit, but it would also affect at least some of those individuals in a disproportionately adverse manner.

For all these reasons, small employers strongly support petitioners, and urge the Court to reverse the lower court's restrictive definition of the field of membership requirement.

B. The National Cooperative Business Association and Many of Its Members Would Be Adversely Affected By the Lower Court's Holding.

NCBA as an association would be directly and adversely affected should the decision of the court of appeals not be reversed because we offer our employees membership in the Agriculture Federal Credit Union (a credit union created for employees of the U.S. Department of Agriculture). An adverse ruling in this case could result in a subsequent order that would prohibit new employees from joining our credit union, or that might even force us to drop our participation in the Agriculture

FCU, which would deprive our employees of the opportunity to belong to a credit union, because we simply do not have enough employees to create our own credit union.

Likewise, many of our member organizations have become sponsors of existing credit unions that have expanded their membership under the policies set forth by the National Credit Union Administration since 1982. Breaking up those credit unions would have severe economic impact on their current members and/or employees who utilize the credit union and would deprive millions of individuals of the opportunity to join a credit union. Cooperatives and cooperative organizations that cannot create their own credit unions tend to be smaller and composed of individuals who have greater economic need for the services of a credit union. In fact, access to a credit union can be for many such cooperative members their sole source of financing other than wages.

The Congress reflects the will of the American people when it passes legislation that promotes the development of cooperatives and credit unions. A 1994 national Gallup poll[11] with an error range of plus or minus 2.3% demonstrates the public's preference. Nearly two-thirds of study participants indicated they were "somewhat" or "much more likely" to use retailers (64%), purchase food products (65%), or use credit unions (63%) if they knew they were cooperatives. Sixty-two percent "somewhat" or "strongly agree" that cooperatives "have the best interests of the customer in mind when conducting their business," while only 34% said the same thing about non-cooperative businesses.

Early this year, NCBA mailed to its 225 active member organizations a voluntary reply questionnaire regarding their

[11] *Awareness and Image of Business Cooperatives: A Survey of the American Public*, prepared by The Gallup Organization; July, 1994.

membership in credit unions. Ninety percent indicated they are affiliated with a credit union. Only 48% indicated they were the original common bond of association of the credit union. Thus, over half of those who responded would be negatively impacted by a decision that they could no longer be members because they did not share the original common bond of the credit union. Others could be impacted indirectly if they were forced to divest their credit union of a portion of their membership and the assets those members bring to the credit union.

The consequences of a decision requiring credit unions to break up and banning credit unions from receiving new groups of members into their field of membership would be antithetical to the intent of Congress in passing the Federal Credit Union Act (FCUA) and would limit the ability of Americans to join credit unions. Under such a narrow reading of the FCUA, employees of small organizations such as the National Cooperative Business Association would be denied the opportunity to be members of a credit union, because there aren't enough employees to make a credit union economically viable. The same would be true of many of our members for the same reason.

The wording of the FCUA is not restrictive, in keeping with the intent of the act, which was to foster the creation of credit unions in order to make them more universally available to consumers. Likewise, it was a reasonable and prudent decision on the part of the National Credit Union Administration (NCUA) in 1982 to interpret the act in a way that would ensure the financial viability of credit unions in an era of extreme economic stress for American financial institutions.

Neither "a common bond of occupation or association" nor "a well-defined neighborhood, community or rural district" can

be held to mean the same thing in 1995 as they did in 1934. Bonds of occupation or association are vastly different in an era of international business where employees work out of their homes and communications and even financial payments are instantaneously transferred on a global communications network. NCUA's decision demonstrated common sense befitting the state of the nation in the 1980's by interpreting the "common bond" language in a way that would continue to foster the well-being of credit unions. Without that interpretation, tens of millions of Americans who have access to credit unions would be denied such access. And countless credit unions would have found their economic well-being threatened. In the intervening 14 years, Congress has not acted to indicate in any way that NCUA was incorrect in its actions.

The Congress demonstrated its continuing commitment to the beneficial impact of cooperative organizations like credit unions when it passed legislation creating the National Cooperative Bank four years before NCUA's action in 1982. "The Congress finds that user-owned cooperatives are a proven method for broadening ownership and control of the economic organizations, increasing the number of market participants, narrowing price spreads, raising the quality of goods and services available to their membership, and building bridges between producers and consumers, and their members and patrons."[12] It's worth noting that again, just as it did when it passed the FCUA, the Congress in this case was passing legislation to provide access to credit to sectors of our economy that commercial banks would not finance.

Credit unions serve those purposes within the financial community. In bringing this suit, bankers demonstrated their desire to maintain their dominance of the financial markets by

[12] 12 U.S.C. § 3001.

insisting on a narrow interpretation of *field of membership* in a way that would frustrate the intent of the FCUA. Bank-held assets in this country are more than sixteen times greater than the assets of credit unions. Over 93 percent of the savings and deposits held by banks and credit unions in the country are held by banks. And yet, bankers would use a narrow definition of the FCUA to frustrate the stated goals of that act.

For all of these reasons, the cooperative members of NCBA strongly support petitioners, and urge the Court to reverse the lower court's restrictive definition of the field of membership requirement.

C. If Upheld, The Court of Appeals' Decision Will Jeopardize The Ability of Over 100,000 College Students, Each Year, To Access Reasonably Priced Financial Services Provided By Student Credit Unions.

CCUC believes that the court of appeals erred in failing to defer to the National Credit Union Administration's ("NCUA's") reasonable interpretation of the Federal Credit Union Act's "common bond" provision, 12 U.S.C. §1759. CCUC urges the Court to uphold NCUA's well-established Interpretive Ruling and Policy Statements ("IRPS")[13] that permitted credit unions to preserve their financial stability through diversification of their memberships. CCUC also wishes to apprise the Court of the practical effect that affirming the lower court's ruling would have on college students and student credit unions nationwide.

[13] *See* Interpretive Ruling and Policy Statement ("IRPS") 82-1, 47 Fed. Reg. 16,775 (1982); IRPS 82-3, 47 Fed. Reg. 26,808 (1982); IRPS 89-1, 54 Fed. Reg. 31,168 (1989); IRPS 94-1, 59 Fed. Reg. 29,066 (1994), *as amended by* IRPS 96-1, 61 Fed. Reg. 11,721 (1996); *see also* 12 C.F.R. § 701.1 (1996).

The term "student credit union" encompasses student-run cooperative financial institutions whose primary field of membership includes students and alumni of a college or university. The term also includes any credit union that added students of a college or university to its field of membership pursuant to NCUA's interpretation of the "common bond" provision of the Federal Credit Union Act. See IRPS 89-1, 54 Fed. Reg. at 31176. Many of these credit unions maintain an on-campus branch which is run by the students of the college or university being served.[14]

College students are considered by NCUA to be a group with little to no income.[15] Nonetheless, the financial services demanded by students such as ATMs, ATM cards and credit cards are technologically advanced and costly to provide. Students at some colleges and universities have been able to harness the resources to charter their own federal credit union and provide such high-cost services to their members. However, for the vast majority of college and university students, the stringent chartering requirements of NCUA and the set-up costs for providing such technologically sophisticated services are prohibitive.

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[14] There is no comparable example to this dynamic, service and education-oriented financial institution among local or national banks. At student credit unions nationwide, students are afforded the opportunity to own and operate their own financial institution and to vote at their credit union's annual meeting to elect their credit union's volunteer board of directors.

[15] The term "low-income member" includes those members of a credit union that are enrolled as full-time or part-time students in a college, university, high school or vocational school. *See* 12 C.F.R. §701.32(d)(2)(ii). A credit union that serves predominantly low-income members may receive a low-income designation from NCUA allowing the credit union to receive nonmember deposits. *See* 12 C.F.R. §701.32(d)(1).

NCUA's interpretation of the "common bond" provision of the Federal Credit Union Act has afforded students access to reasonably-priced financial services through on-campus credit union branches without the need to charter their own credit union. Additionally, NCUA's interpretation provided students with an alternative to the substantially higher bank fees and charges associated with the services most used by students. Finally, NCUA's interpretation of the "common bond" provision of the Federal Credit Union Act has allowed credit unions to maintain their economic viability by diversifying their membership and by balancing services to borrowers (e.g., students) and savers (e.g., older members).

If the court of appeals' decision is upheld, credit unions which have added student groups to their field of membership will be prohibited from adding new student members. Incoming college and university freshmen as well as potential undergraduate credit union members will not be able to join these credit unions because the decision prohibits a credit union from adding a group of college students to its field of membership if the group does not share the credit union's original common bond. This means that in excess of 100,000 students each fall[16] will be denied access to the financial services offered by student-run branch credit unions. The lower court's ruling will also force student-run branches to close due to the inability of the credit union to add new student members and the financial hardship of maintaining an on-campus branch whose use will dwindle with each successive year.

In addition, the court of appeals' decision will have a devastating impact on the availability of credit union services to those campuses that cannot harness the financial resources

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[16] This figure is based on the current enrollment figures for the colleges and universities cited in footnote 4 divided by four (4).

to build a stand-alone student credit union. The costs to charter a credit union and provide the services demanded by students are prohibitive for the majority of college and university students. If the court of appeals' decision is allowed to stand, students will be relegated to conducting their financial transactions exclusively at banks.

Effectively, the lower court's ruling results in the elimination of students' choice between cooperative credit and traditional, fee-riddled bank services. While students can certainly open accounts with banks, such accounts come at a very dear price. High minimum balance requirements, high fees and stringent credit requirements at banks force a group with little to no income to pay a great deal just to establish a credit history.

A recent comparison between account terms and fees charged by local banks and The Credit Union for Berkeley Students ("CUBS")[17], manifests the extent to which students are subject to excessive bank fees and rates. The comparison showed the following:

- CUBS charges no fees for use of a CUBS issued ATM card at another financial institution's ATM. In contrast, local banks such as Wells Fargo Bank and Bank of America charge up to $2.00 to use their ATM cards at other financial institutions' ATMs. Additionally, these banks impose a surcharge of up to $2.00 for access to their respective ATMs with cards not issued by them.

[17] This information was collected by the Credit Union for Berkeley Students as of October, 1996.

- Wells Fargo Bank and Bank of America charge $8.50 monthly on regular checking accounts.[18] Both banks waive the fee with a $1,000.00 minimum checking account balance or with a combined checking and savings account balance of $3,000.00. In stark contrast, CUBS charges a $4.00 monthly student checking account fee which is waived with a $750.00 minimum checking account balance.

- CUBS' VISA card has no annual or cash advance fee, an annual percentage rate of 15% and a late payment fee of $7.00. Wells Fargo Bank's VISA Card has an $18.00 annual fee (waived the first year), a 2% cash advance fee, an annual percentage rate of 19.8% and a late payment fee of $15.00. Bank of America's VISA card has no annual fee but does have a 2% cash advance fee, a 17.75% annual percentage rate and a $15.00 late fee.

- Wells Fargo Bank makes unsecured personal loans from $2,000.00 to $25,000.00 at an annual percentage rate of 19.25%. Bank of America makes such loans from $2,500.00 to $10,000.00 at an annual percentage rate of $19.50%. CUBS makes such loans up to $25,000.00 at an annual percentage rate of 13-15%.

The differences in these fees, rates and terms are crucial to students who live on low income but who require financial services to survive and to establish a credit history.

[18] Other accounts may be offered by these banks which are student oriented; however, the regular checking accounts at both institutions were chosen for the comparison because they most resemble the CUBS checking account.

The court of appeals' decision obliterates the ability of students to choose between reasonably-priced cooperative credit and traditional, high-cost bank services. Moreover, if upheld, the decision will force many on-campus credit union branches to close, since the credit unions could no longer add new student members. Hundreds of thousands of students would be barred from credit union access due to these branch closings and due to the prohibitive cost of setting up their own credit union. CCUC believes that the economic and educational benefits provided to student members of college student credit unions are the direct result of NCUA's long-standing interpretation of the "common bond" provision of the Federal Credit Union Act. CCUC urges the Court to uphold NCUA's interpretation of the Federal Credit Union Act in the interests of college students nationwide who rely on credit union services.

D. Protecting the Public Interest Requires Consideration of the Concerns of Real People: The Employees of ABC's Members.

ABC urges the Court to reverse the decision of the Court of Appeals for failing to defer to the NCUA's interpretation of the "common bond" requirement of the Federal Credit Union Act. The NCUA's interpretation is consistent with both the plain language and the stated purpose of the statute. Moreover, that interpretation accurately reflects the balance that Congress intended between the accessibility of banking and credit union services.

The greatest impact of the flawed decision of the Court of Appeals will be felt by the individual depositors, the small "shareholders" in credit unions, who must decide where to put their retirement money, or their college funds, or their health care nest egg, and where to borrow enough money to buy a used car or their first home. ABC sponsors one of the largest

credit unions in the country, the IR Federal Credit Union, with approximately 860 separate employer groups of ABC member firms. Changes in employment are frequent in the construction industry, with workers commonly hired by more than one employer each year. As an employee leaves one ABC member-firm employer and is hired by another, the employee can retain his membership in this one credit union serving both groups of employees.

If having more than one employer group in a credit union is unlawful, the IR Federal Credit Union will necessarily be disbanded, and many of its members will have no other place to save or to borrow. The stability, convenience and affordability of the financial services offered to these workers will be destroyed.

Credit union services could continue to be available to these workers if each employer sponsors its own separate credit union. But this is more dream than reality. Most employer groups now served by the IR Federal Credit Union would not be large enough, 500 employees according to the NCUA, to support a sustainable cost-effective credit union operation. The vast majority of ABC members have fewer than 500 (actually fewer than 50) employees. Rational employers will not make the investment needed to establish a credit union to serve transient workers if the credit union is doomed to fail.

Moreover, even if many employers did establish separate credit unions, instead of having convenient access to the same credit union with each move from one ABC member firm to another, workers would be forced to establish a new relationship with each new employer's credit union to obtain access to such affordable financial services. In light of the frequency of changes of employment typical in the construction industry, the fluctuations in membership that accompanied the cycles of employment would be devastating to the viability of

credit union operations. Even more important, though, few workers would undertake the effort needed repeatedly with each move to transfer their accounts or to become known to managers of a new credit union. Instead, most workers likely will just drop their credit union membership.

The banks apparently hope that the prospect of such constant interruption in these workers' financial services relationships will force each worker to abandon his relationship with credit unions and begin instead a relationship with a bank. But that relationship either will become more distant with each move, or will be with a financial institution large enough to provide services in every community to which the worker moves. In either case, the financial services available to the worker will become both less convenient and less affordable than those now offered through the credit union sponsored by ABC.

Workers who move about the country will become strangers to a "home" financial institution. Favorable credit decisions will become harder to obtain, as each worker loses contact with the lending officers in the worker's "home" branch. Checks written by the worker will be drawn on an "out-of-state" institution and will be that much harder to cash or offer in payment. Alternatively, preserving a relationship with a bank large enough to serve every community to which the worker moves will only lessen the inconvenience of obtaining such services -- it is unlikely these banking services will be available in the workplace. Moreover, for these workers of small means, the fees charged by such large banking institutions are prohibitive.

If the order below is not reversed, decisions of great personal import to these individual workers and their families will continue to be adversely and improperly affected. These workers will not simply turn to banks to fulfill their needs.

Instead, they will not save their money; they will not buy a new home. To them, such financial services will effectively become unavailable. For these reasons, ABC and the builders and contractors it represents ask the Court to reverse the decision of the Court of Appeals and restore public confidence that these workers will have access to the convenient and affordable financial services that Congress intended.

CONCLUSION

For all the reasons stated above and in the briefs submitted by petitioners, the Court should hold that the Court of Appeals' decision imposing a restrictive reading on the common bond requirement of the FCUA is contrary to the plain meaning of the Act as well as its broad and salutary purposes, and must be reversed.

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May 12, 1997

APPENDIX

APPENDIX: MEMBERS OF AD HOC SMALL EMPLOYERS' GROUP

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Tullahoma, Tennessee 37388

The Timken Company
1835 Dueber Avenue, S.W.
Canton, Ohio 44706

Robert Orr-Sysco
One Hermitage Plaza
P.O. Box 305137
Nashville, Tennessee 37209

Acme Mechanical
Contractors, Inc.
612 Volunteer Parkway
Manchester, Tennessee
37355

Amprite Electric
Company, Inc.
929 Fifth Avenue South
Nashville, Tennessee 37203

Total Graphics, Inc.
105 West High Street
Manchester, Tennessee
37255

Christian Manufacturing, Inc.
1711 Fratebarker
Austin, Texas 78741

JTW Enterprises, Inc.
336 S. Congress
Austin, Texas 78704

Texas Insurance
Organization
2801 South I.H. 35
Austin, Texas 78741

Taylor Security Systems
720 Bastrup Highway
Austin Texas 78741

Pontiac Coffee Break, Inc.
2265 Dixie Highway
Waterford, Michigan 48328

Pontiac Graphics
605 Oakland Avenue
Pontiac Michigan 48342

Metro Aircraft Instruments
2135 Airport Road
Waterford, Michigan 48327

Gaukler Storage Company
400 South Boulevard East
Pontiac, Michigan 48341

World Credit, Inc.
2665 Elizabeth lake Road
Waterford, Michigan 48328

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Western Wayne/Oakland County
Association of Realtors
24125 Drake Road
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1981 N. Broadway, Suite 215
Walnut Creek, California 94596

M. Bumgarner, Inc.
1175 Greenville Road
Livermore, California 94450

Pacific Coast Mortgage
3223 Crow Canyon Road
Suite 300
San Ramon, California
94583

Alliance Leasing
Corporation
4030 Commerce Park
Drive
Marietta, Georgia 30060